

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
WESTERN DIVISION

MP Totalcare Services, Inc.,

Case No. 3:08CV885

Plaintiff

v.

ORDER

Tricia Lynn Mattimoe, et al.,

Defendant

Pending is a motion by the defendants to have this case, now scheduled for a nonjury trial, tried before a jury. Plaintiff opposes the request.

Rule 39(b) authorizes setting a case for trial before a jury “on any issue for which a jury might have been demanded.”

No party demanded a jury trial when filing its initial pleadings. Nonetheless, the original case management order set the case for twelve person jury trial. While no record exists of the conference leading to that order, it is my routine and customary practice to type those orders during the conference, reciting their contents to counsel as we go along. I have no doubt that I did so at the case management conference in this case.

Had counsel called my attention to the lack of a jury demand at that time, I would have set the case for nonjury trial.

Because I had to vacate the original trial date, I had to reset the trial date. I did so as a non-jury trial – presumably because counsel then told me that neither party had demanded a jury trial.

I generally prefer to have cases tried by a jury. Here, where one side wants, and represents that it had been anticipating a jury trial, I much prefer to exercise the discretion granted to me, *see Kitchen v. Chippewa Valley Sch.*, 825 F.2d 1004, 1012-13 (6th Cir. 1987), under Rule 39(b) to reset the case for trial by jury.

It is, accordingly,

ORDERED THAT the trial previously set as a non-jury trial to begin on March 2, 2010, at 8:30 a.m., be, and the same hereby is reset for such date and time as a jury trial; unless any party objects on or before December 1, 2009, voir dire will occur before the United States Magistrate Judge on March 1, 2010, beginning at 1:30 p.m.

So ordered.

s/James G. Carr
James G. Carr
Chief Judge